VideoLab
Para Technologies Inc.™

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02/26/97

William Caton, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Dear Mr. Caton:

Enclosed is an original and 12 copies of formal comments on the "industry proposal for rating video programming," **Docket No. CS 97-55 / FCC 97-34**. Please forward the 12th copy to Rick Chessen in cable services (202 418 7042).
A computer text file of this comment may be easily obtained by the FCC internet Webmaster at:
ftp://ftp.teleport.com/vendors/paratech/ratecom.txt

Also enclosed is an original and 11 copies of formal comments on the "closed caption NPRM," **Docket No. MM 95-176 / FCC 97-4**.
A computer text file of this comment may be easily obtained by the FCC internet Webmaster at:
ftp://ftp.teleport.com/vendors/paratech/capcom.txt

Following is additional information for the FCC internet Webmaster regarding the availability of computer disks for these documents.

Sincerely,

Tom Anderson
President,
Para Technologies, Inc.

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VideoLab
Para Technologies Inc.™

ATTN: FCC WEBMASTER

The formal comments provided by Para Technologies, Inc. were produced on a Macintosh using FrameMaker. It is impractical to translate them to WordPerfect. We do not yet have Adobe Acrobat to generate PDF files. It is assumed that you cannot easily use a Macintosh text file.

The best solution was to post the documents in text form on our ftp site. This assures correct formatting for web use, guarantees that special characters (e.g. §,¶) are displayed properly, and strips the resource fork from the files. Please download the files, if you want to post them on your web site.

Ratings Comment:	ftp://ftp.teleport.com/vendors/paratech/ratecom.txt
Closed Caption Comment:	ftp://ftp.teleport.com/vendors/paratech/capcom.txt

Regards,

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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
Television Program Rating	)	
	)	Docket No. CS 97-55
Implementation of Section 551 of the Telecommunications Act of 1996	)	COMMENT
	)	
Parental Choice in Television Programming	)	
	)	

FORMAL COMMENTS ON INDUSTRY PROPOSAL FOR RATING VIDEO PROGRAMMING FCC 97-34 / REPORT NO. CS 97-6 / CS DOCKET NO. 97-55

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FORMAL COMMENTS ON INDUSTRY PROPOSAL FOR RATING VIDEO PROGRAMMING FCC 97-34 / REPORT NO. CS 97-6 / CS DOCKET NO. 97-55

I. INTRODUCTION

The time to argue whether a television rating system will convey information about age, or about violent content, sexual content, or other indecent content, has long since passed. Congress and the President have already decided the issue. The Telecommunications Act of 1996 became the law of the land on 02/08/96.[1] Therein Congress established that a rating system shall inform parents about violent, sexual, or other indecent content in video programming.

The only issue remaining for argument is whether distributors of video programming have in fact established voluntary rules acceptable to the Federal Communications Commission (Commission) for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children; or whether the Commission must prescribe the guidelines, recommended procedures, and rules as required by the statute.

On 01/17/97, the Television Ratings Implementation Group (Ratings Group), chaired by Mr. Jack Valenti, formally issued a proposal for rating video programming

1. P.L. 104-104; 110 Stat. 56.

(industry proposal). That industry proposal is comprised of recommendations which: (1) fail to inform parents about sexual, violent, or other indecent material in a video program; (2) fail to permit parents to block a video program on the basis of either sexual content, or violent content, or other indecent content; and (3) fail to permit a parent to determine the specific type of program content inappropriate for their own individual children. Instead, the Ratings Group has recommended guidelines and procedures which inform parents of a third party determination of an appropriate age for a child to view a video program.

Both the intent and meaning of the governing statute clearly and unambiguously: (1) require ratings to inform parents about sexual content, or violent content, or other indecent content in a video program; (2) require parents to have the ability to severally block violent programming, or sexual programming, or other programming that they believe harmful to their children; and (3) states that the purpose of the statute is to empower parents to block violent programming, or sexual programming, or other programming that they believe harmful to their children. The industry proposal ignores the criteria specifically enumerated by Congress, and defeats a stated purpose of the statute by allowing parents to block video programming solely on the basis of a child's age as determined by a third party.

The industry proposal does not reach the statutory thresholds established by Congress. The Commission cannot find acceptable a recommendation which on its face defeats the stated purpose of the statute. Upon finding the industry proposal unacceptable, the statute requires the Commission to promulgate guidelines, recommended procedures, and rules for the rating of television programs.

II. FACTUAL ALLEGATIONS

A. LEGISLATIVE FACTS

1. P.L. 104-104 §551(e)(1)(A) and 47 U.S.C. §303(w)(1) provide for several blockage of video programming based on sexual content, or violent content, or indecent content. This is distinctly different than blockage based on an age rating derived from a homogenized combination of sexual, violent, and indecent content.

2. P.L. 104-104 §551(e)(1)(A) and 47 U.S.C. §303(w)(2) provide for technology to permit a parent to determine what video programming is inappropriate for their own individual child to watch. This is distinctly different than a third party determining the appropriate age for all children to watch a video program.

3. Congress, by P.L. 104-104 §551(a)(8), has found as fact that:

> There is a compelling governmental interest in empowering parents to limit the negative influences of video programming that is harmful to children.

4. Congress, by P.L. 104-104 §551(a)(9), has found as fact that:

> Providing parents with timely information about the nature of upcoming video programming and with the technological tools that allow them easily to block violent, sexual, or other programming that they believe harmful to their children is a nonintrusive and narrowly tailored means of achieving that compelling governmental interest.

5. With P.L. 104-104 §551(e)(1), Congress granted the television industry one year to establish voluntary rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children.

6. On January 17, 1997, the Commission recognized receipt of a television industry proposal for rating video programming.

7. In the event that the Commission finds that the industry proposal does not establish rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed pursuant to P.L. 104-104 §551(e)(1)(A), then—

(a) 47 U.S.C. §303(w)(1) requires the Commission to promulgate guidelines and recommended procedures for the identification and rating of video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children; and

(b) 47 U.S.C. §303(w)(2) requires the Commission to promulgate rules requiring distributors of such video programming to transmit such rating to permit

parents to block the display of video programming that they have determined is inappropriate for their children.

8. V-chip legislation sponsors, supporters, and even legislators opposed to the V-chip uniformly recognized the intent of Congress to inform parents about the several types of content in a program, not an appropriate age to watch a program.

(a) The V-chip can "block out the myriad of channels and the myriad of time slots and the myriad of pornography and violence that is coming across the airwaves." Mr. Burton, Amendment Sponsor, 141 CR H8492 (daily ed. 08/14/95).

(b) "V-chip technology will give parents greater control over the type of programming that their children can watch. ...The FCC is the appropriate agency to recommend guidelines and standards for violent and indecent material so that parents can make an intelligent and informed decision." Ms. Jackson-Lee, 141 CR H8491 (daily ed. 08/14/95).

(c) Even those in opposition recognized that "The V-chip will only block programs rated as violent or indecent by the rating commission." Mr. Norwood, 141 CR H8494 (daily ed. 08/14/95).

B. ADJUDICATIVE FACTS

9. The industry proposal specifically admits that the proposed rating categories are age based, and only the third party decision as to which age based category a program falls is determined by program content.[2] Age is a different criteria than those specifically listed by Congress in the statute.

10. The industry proposal admits that four out of the six age based categories "may" (or may not) contain sexual, violent, or other indecent material.[3] As a result of this "may or may not" standard, the industry proposed categories inform parents about neither the nature of a video program nor the criteria specifically listed by Congress in the Statute.

11. The industry proposal admits that the design goal of the rating system is to be a "simple, easy to use system."[4] To achieve this objective, the industry proposal

2. Industry Proposal FCC 97-34, Report No. CS 97-6, Appendix p. 1 [¶3] (02/07/97).
3. Industry Proposal supra, Appendix pp. 2-3, [¶¶5, 7-9].
4. Industry Proposal supra, Appendix p. 3 [¶10].

restricts the amount of information provided to parents and suppresses the Congressionally specified criteria by which parents can block programming.

12. The industry proposal admits that "The TV Parental Guidelines will permit parents quickly to decide which [age based] categories of programming they wish their children to watch..."[5]

13. The industry proposal erroneously claims to "provide parents with information concerning the level and kinds of content in a program;" that parents "will be informed about the levels of sexual and violent materials;" and that a rating "will reflect levels of the precise content that Congress identified..."[6] The truth is that a given age based category may or may not contain any combination of sexual, violent, or other indecent material.[7] The only precise information in the industry proposal is age level.

14. The industry proposal erroneously claims that "The Guidelines will be applied to all television programming except for news and sports."[8] The industry proposal ignores video programming in the form of advertisements, sports, and news. Congress did not exempt advertisements, news, or sports from the scope of "video programming" stated in the statute. Such programming is among the most violent and sexually suggestive material broadcast today.

15. The industry proposal has not established voluntary rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children, pursuant to P.L. 104-104 § 551(e)(1)(A).

16. The industry proposal has established voluntary rules which inform parents about age. These rules fail to inform parents about the specific types of video program content enumerated by Congress. These voluntary rules defeat a stated purpose of the enabling statute.

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5. Industry Proposal supra, Appendix p. 4 [¶11].
6. Industry Proposal supra, Appendix p. 3 [¶10], p. 9 [¶26], p. 10 [¶28], respectively.
7. Supra at n. 2-3.
8. Industry Proposal supra, Appendix p. 5 [¶15].

17. The industry proposal has established voluntary rules which permit a parent to determine if the age of their children match the age determined by a third party to be appropriate for viewing a video program. These rules fail to permit parents to determine what type of video program content is inappropriate for their individual children. These voluntary rules defeat a stated purpose of the enabling statute.

18. The Ratings Group has suggested that the industry proposal shall not become final until December, 1997. Television manufacturers must begin tooling their production lines in the third quarter of 1997 to make V-chip technology available by the statutory deadline of 02/08/98. Television manufacturers will be physically unable to incorporate user interface design changes resulting from the conclusion of the ten month rating system trial period proposed by the Television Ratings Implementation Group and the President of the U.S. The system which is ultimately accepted by the Commission will become the final system. The physical design and manufacturing production schedule of V-Chip equipped televisions equitably estops any changes to whatever rating system is deemed acceptable by the Commission.

19. A voluntary television program rating system has been in place for many years which informs parents about mature content through "parental advisory" notices. The industry proposal differs little in substance from the preexisting age based rating system.

III. ARGUMENT

A. CHOICE

P.L. 104-104 §551 clearly requires video program ratings to inform parents about, and permit them to block video programming on the basis of sexual, violent, or other indecent content. The industry proposal recommends a different criteria based on age, which may or may not consist of any combination of sexual, violent, and other indecent program content. The industry proposal does not inform parents about the specific criteria listed by Congress, and instead addresses a criteria wholly apart from the statute. In doing so, the industry proposal limits and suppresses the information

which Congress declared should be disclosed to parents, it ignores a stated purpose of the statute, and it renders a portion of the statute ineffective.

> We cannot interpret federal statutes to negate their own stated purposes.[9]

The industry proposal erroneously claims: to "provide parents with information concerning the level and kinds of content in a program;" that parents "will be informed about the levels of sexual and violent materials;" and that a rating "will reflect levels of the precise content that Congress identified..."[10] The truth is that a given age based category may or may not contain any combination of sexual, violent, or other indecent material.[11] This "may or may not" rule is an empty standard or meaningless policy which reflects nothing but age — a parameter wholly ignored by Congress.

The rating system in place prior to enactment of the Telecommunications Act already informed parents about the appropriate maturity level for a child to watch a video program. These "parental advisory" notices perform substantially the same function as the industry proposal. Congress did not find it sufficient to inform parents about the appropriate maturity level for a child to watch a program, and instead enacted legislation requiring that parents be specifically informed about sexual, violent, or other indecent program content. The industry proposal denies a parent the ability and choice to select the criteria they determine to be appropriate for their children, as specifically set forth by Congress.

B. TECHNOLOGICAL LITERACY

By enacting P.L. 104-104 §551(e)(1)(A) and 47 U.S.C. §303(w) Congress recognized the technological literacy of the current generation of parents. Through P.L. 104-104 §551(a)(7), Congress found as fact:

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9. New York State Dept. of Social Services v. Dublino, 413 U.S. 405, 419-420 (1973).
10. Industry Proposal supra, Appendix p. 3 [¶10], p. 9 [¶26], p. 10 [¶28], respectively.
11. Supra at n. 2-3.

> Parents express grave concern over violent and sexual video programming and strongly support technology that would give them greater control to block video programming in the home that they consider harmful to their children.

Congress found that parents want greater control. Congress did not find that parents want a system that is easy to understand which simply tells a parent whether a class of all children are too young to watch a video program.

The industry proposal admits that it is designed to be a "simple, easy to use system."[12] To achieve this objective, the industry proposal restricts the amount of information provided to parents and suppresses the Congressionally specified criteria by which parents can block programming. Such a design goal has resulted in a system which defeats a stated purpose of the statute. The power switch to a television is the easiest control device to use. However, Congress did not find that parents want less control and greater ease of use.

The industry proposal further admits that "The TV Parental Guidelines will permit parents quickly to decide which [age based] categories of programming they wish their children to watch..."[13] If the objective of the industry proposal is to create a quick and easy to use system, the proper method to achieve that objective is not to nullify provisions of the enabling statute and defeat its stated purpose, but to go further than the statute requires.

The legally and technologically appropriate solution is to recommend that the user interface of a television receiver severally display information about sexual, violent, and other indecent content; and in addition to those criteria specifically listed by Congress, a television receiver can also display an age rating. Such an age rating could be determined by a third party and broadcast in addition to the criteria specified by Congress, or a television receiver could make a mathematical calculation which algorithmically combines the criteria to produce an age rating. In addition to blocking video programming based on sexual, violent, or other indecent content, a parent

12. Industry Proposal supra, Appendix p. 3 [¶10].
13. Industry Proposal supra, Appendix p. 4 [¶11].

could also block programming based on the additional fourth parameter of an age level.

C. BURDEN OF PROOF

The industry proposal literally opposes the new technology capabilities severally listed in 47 U.S.C. §303(w) which will: (1) inform parents about sexual, violent, or other indecent material before it is displayed to children; and (2) permit a parent to block the display of video programming that they have determined is inappropriate for their children. Instead, the industry proposal recommends the implementation of technology other than that specifically enumerated by Congress. That technology will: (1) inform a parent about the appropriate age for a child to view a video program; and (2) permit a parent to block the display of video programming which is determined by a third party to be inappropriate for children below a given age.

Pursuant to 47 U.S.C. §157, the burden is upon the Ratings Group to demonstrate that the new technology capabilities enumerated in 47 U.S.C. §303(w) are inconsistent with the public interest. This is an extreme burden, since Congress through P.L. 104-104 §551(a)(9) has already found that:

> Providing parents with timely information about the nature of upcoming video programming and with the technological tools that allow them easily to block violent, sexual, or other programming that they believe harmful to their children is a nonintrusive and narrowly tailored means of achieving a compelling governmental interest.

D. POLICY OF GOVERNMENT, PURPOSE OF LEGISLATION

P.L. 104-104 §551(a)(9) declares that the purpose of the statute is to inform parents about, and enable them to block violent, sexual, or other programming that they determine to be harmful to their children. The industry proposal specifically admits that the proposed rating categories are age based, and that only a third party can decide which age based category applies to a program on the basis of content.[14] The industry proposal that parents be informed about a third party determination of age level is wholly inconsistent with the stated purpose of the statute.

14. Industry Proposal FCC 97-34, Report No. CS 97-6, Appendix p. 1 [¶3] (02/07/97).

> Congress expresses its purpose by words. It is for us to ascertain — neither to add nor to subtract, neither to delete nor to distort.[15]

The industry proposal admits that four out of the six age based categories "may" contain sexual, violent, or other indecent material.[16] The corollary of this standard is that the same categories may not contain sexual, violent, or other indecent material. This is a traditional empty standard or meaningless policy statement which informs parents about nothing but age, which the television industry deems to be appropriate to watch a program.[17]

A statute is a solemn enactment of the citizens legislated through their elected representatives, and it must be assumed that this process achieves an effective and operative result. It cannot be presumed that Congressional legislation is futile.[18]

Members of Congress overwhelmingly understood that the purpose of the V-chip is to allow parents to block video programming on the basis of the specific criteria listed in the statute, not on the basis of age determined by a third party using a "may or may not" combination of the criteria. Even those in opposition recognized that "The V-chip will only block programs rated as violent or indecent by the rating commission." Mr. Norwood, 141 CR H8494 (daily ed. 08/14/95).

The public policy underlying a statutory provision is found by examining the history, purpose, language, and effect of the provision, as well as the conditions giving rise to the legislation.[19] Thus, policy considerations dictate the interpretation according to what is conceived as the purpose of a statute.[20]

> All statutes must be construed in light of their purpose.[21]

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15. Board of Education v. Rowley, 458 U.S. 176, 190 (1982); 62 Cases of Jam v. United States, 340 U.S. 593, 596 (1951).
16. Industry Proposal, Appendix pp. 2-3, [¶¶5, 7-9].
17. See K. Davis, Administrative Law Treatise, §2.6 p. 67, §6.2 p. 232 (3d. ed. 1994).
18. Davies Warehouse Co. v. Bowles, 321 U.S. 144 (1944); Singer v. United States, 323 U.S. 338 (1945); Markham v. Cabell, 326 U.S. 404 (1945).
19. Church of the Holy Trinity v. United States, 143 U.S. 457 (1892); Wong Yang Sung v. McGrath, 339 U.S. 33 (1950); United States v. Champlin Refining Co., 341 U.S. 290 (1951).
20. Walton v. Cotton, 19 How (60 U.S.) 355 (1857); Van Beek v. Sabine Towing Co., 300 U.S. 342 (1937).
21. Haggar Co. v. Helvering, 308 U.S. 389, 394 (1940). See, Norfolk Redevelopment & Housing Authority v. Chesapeake & Potomac Tel. Co., 464 U.S. 30 (1983); Dickerson v. New Banner Institute, Inc., 460 U.S. 103 (1983); Chapman v. Houston Welfare Rights Org., 441 U.S. 600 (1979).

E. EXPRESSED INTENT

The industry proposal contravenes the expressed intent of Congress to empower parents to be informed about different types of program content and decide for themselves whether to block different types of video programming they independently determine to be harmful to their individual children. Congress specifically listed violent content, sexual content, or other indecent content as specific criteria about which parents should be informed. Congress also found distinctly separate social issues pertaining to violence and sexuality in P.L. 104-104 §§551(a)(4), (5), and (6).

Congress found that children exposed to violent video programming are prone to assume that acts of violence are acceptable behavior. Such an inclination towards violence is an issue which each parent must address to their individual children. Each situation is unique and dependent upon innumerable factors. A single program rating parameter based upon age or maturity determined by a third party, which may or may not account for sexual content and other factors, cannot predict what is appropriate for a child as effectively as the child's parent.

Congress further found that children are affected by the pervasiveness and casual treatment of sexual material on television, eroding the ability of parents to develop responsible attitudes and behavior in their children. Again, each parent child relationship is different, and each unique relationship deals with sexual development, education, and behavior in a different manner. A program rating based upon age or maturity determined by a third party, which may or may not account for violent content and other factors, cannot predict what is appropriate for a child as effectively as the child's parent.

Under the traditional approach to statutory interpretation, the plain meaning of the statutory language controls the statute's interpretation unless a different interpretation appears in the legislative history. A court's objective in expounding a federal statute is to ascertain the congressional intent and give effect to the legislative will.[22]

22. Philbrook v. Glodgett, 421 U.S. 707, 731 (1975). See, Pennington v. Coxe, 2 Cranch (6 U.S.) 33 (1804); White v. United States, 191 U.S. 545 (1903); Interstate Commerce Commission v. Baird, 194 U.S. 25 (1904); United States v. American Trucking Assn., 310 U.S. 534 (1940).

A preference for literalism in determining the effect of a statute may be based on the constitutional doctrine of separation of powers.[23] The courts and agencies owe fidelity to the will of the legislature. What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, courts are bound to give effect to the expressed intent of the legislature.[24]

> It is assumed that the legislative purpose is expressed by the ordinary meaning of the words used.[25]

Statutes must be applied as written, leaving to Congress the correction of "inconsistencies and inequalities."[26] Courts should not depart from a statute's plain meaning to correct inconsistencies.[27] Regard is to be had for the evils which called forth the enactment.[28]

F. STANDARDS OF JUDGEMENT: MEANING OF THE STATUTE

Congress listed distinct criteria about which parents should be informed, and repeated the list no less than four times. The Ratings Group has recommended a single video program rating criteria which is different than those specifically listed by Congress. The industry proposal attempts to construe the statute as an implied endorsement of the MPAA movie rating system by saying that: "If Congress had believed that an MPAA-like age-based ratings system would not achieve its goals, it easily could have said so."[29]

Inquiry begins not with conjecture about what Congress would have liked to have said when it wrote the statute or with what Congress would say today given the chance, but rather what Congress indeed expressed in the statutory text.[30] It is generally accurate to assume that when Congress says one thing, it does not mean something

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23. Public Citizen v. Department of Justice, 491 U.S. 440, 470-479 (1989).
24. Isbrandtsen Co., Inc. v. Johnson, 343 U.S. 779 (1952); United States v. Henning, 344 U.S. 66 (1952); United States v. Public Utilities Commission of California, 345 U.S. 295 (1953); Central Bank v. United States, 345 U.S. 639 (1953); United States v. Harris, 347 U.S. 612 (1954); Valentine v. Mobil Oil Co., 789 F. 2d 1388 (9th Cir. 1986).
25. Kosak v. United States, 465 U.S. 848, 853 (1984); American Tobacco Co. v. Patterson, 456 U.S. 63, 68 (1982); Richards v. United States, 369 U.S. 1, 9 (1962).
26. McClain v. Commissioner, 311 U.S. 527, 530 (1941).
27. McFeely v. Commissioner, 296 U.S. 102, 110-111 (1935).
28. Fasulo v. United States, 272 U.S. 620 (1926); United States v. Champlin Refining Co., 341 U.S. 290 (1951).
29. Industry Proposal supra, Appendix p. 9 [¶27].
30. See e.g., Potomac Elec. Power Co. v. Director, Office of Workers' Compensation Programs, United States Dept. of Labor, 606 F. 2d 1324 (D.C. Cir. 1979).

else.[31] The negative of what was not legislated can never be construed to imply a positive expression of the legislature.

"Expressio unius alterius est" is the applicable statutory construction rule:

> When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode.[32]

Congress declared that parents should be informed about violent content, sexual content, or other indecent content. Under this canon, informing parents about something different, such as age, does not satisfy the intent expressed in the statute by Congress.

Implied endorsement of Justice Holmes' point of view is discernible in the many cases which express preference for "common," "ordinary," "natural," "normal," or "dictionary" meanings.[33] The policy favoring conventional meanings and general understanding over obscurely evidenced intention of the legislators is supported in the oft-repeated premise that intention must be determined primarily from the language of the statute itself.[34]

This method of interpretation gives effect to the meaning which is communicated by the language of the statute, rather than to any arbitrarily attributed meaning. Since the statute was enacted, the legislature must have intended the language of the statute to communicate its meaning.[35]

G. ORDINARY MEANING

It is clear that the statutory threshold for acceptability to the Commission is whether the industry proposal informs parents about violent, sexual, or other indecent content. It is also clear that the industry proposal informs parents only about age. "TV14" exclusively conveys information about age. "TV14" may or may not contain any

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31. See, United States v. Cardenas, 864 F. 2d 1528 (10th Cir 1989).
32. National R. Passenger Corp. v National Asso. of R. Passengers, 414 US 453, 458 (1974); Botany Worsted Mills v United States, 278 US 282, 289 (1929); Raleigh & G. R. Co. v Reid, 13 Wall (80 U.S.) 269 (1872); See Singer, Statutes and Statutory Construction, §57.10 (5th ed. 1994).
33. See e.g., Richards v. United States, 369 U.S. 1, 9 (1962).
34. Flora v. United States, 357 U.S. 63 (1958); Patagonia Corp. v. Board of Governors of Federal Reserve System, 517 F. 2d 803 (9th Cir. 1975); United States v. Rone, 598 F. 2d 564 (9th Cir. 1979).
35. Aron, Tidewater Oil v. United States: Statutory Construction or Destruction???, 34 U. Pitt. L. Rev. 725 (1973).

combination of content, and it is not the same as "V14" or "S14." The industry proposal is not even barely adequate.

One who questions the application of the plain meaning rule to a provision of an act must show either that some other section of the act expands or restricts its meaning, that the provision itself is repugnant to the general purview of the act, or that the act considered in pari materia with other acts, or with the legislative history of the subject matter, imparts a different meaning. In the absence of compelling reasons to hold otherwise, it is assumed that the plain and ordinary meaning of the statute was intended by the legislature.

> As in all cases involving statutory construction, our starting point must be the language employed by Congress, and we assume that the legislative purpose is expressed by the ordinary meaning of the words used. Thus absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive.[36]

H. EACH WORD GIVEN EFFECT

The industry proposal fails to give effect to all the provisions of P.L. 104-104 §§551(a)(8), (a)(9), (e)(1)(A) and 47 U.S.C. §§303(w)(1), (2). The recommended rating system does not specifically inform parents about: (1) violent program content; (2) sexual program content; or (3) indecent or other program content. The recommended rating system also does not permit parents to separately or together block those differing types of programming that they themselves determine to be inappropriate for their own individual children. The industry proposal destroys many provisions of the statute by setting forth a rating system where a third party determines the appropriate age for a child to watch a video program.

A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void, or insignificant, and so that one sec-

36. American Tobacco Co. v. Patterson, 456 U.S. 63, 68 (1982); Quoting, Reiter v. Sonotone Corp., 442 U.S. 330, 337 (1979); Richards v. United States, 369 U.S. 1, 9 (1962); Consumer Product Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980). See also, Kaiser Aluminum & Chemical Corp. v. Bonjorno, 494 U.S. 827 (1990); United States v. James, 478 U.S. 597 (1986); Escondido Mut. Water Co. v. La Jolla, Rincon, San Pasqual, Pauma, & Bands of Mission Indians, 466 U.S. 765 (1984); American Bank Trust Co. v. Dallas County, 463 U.S. 855 (1983).

tion will not destroy another unless the provision is the result of obvious mistake or error.[37] With respect to the construction of statutes, Congress is not presumed to draft its laws in a way that produces duplication or omission.[38]

> The cardinal principle of statutory construction is to save and not to destroy. It is our duty to give effect, if possible, to every clause and word of a statute, rather than to emasculate an entire section.[39]

I. LITERAL MEANING

Congress said that the FCC must prescribe guidelines, recommended procedures, and rules if distributors of video programming do not:

> [establish] voluntary rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children.

The statute lists: (1) sexual content, (2) violent content, and (3) other indecent material content as the criteria about which parents should be informed. The words "maturity" or "age" do not even appear in the statute. It is important to adhere to the language and structure of a statute especially when the language results from a series of carefully considered compromises.[40]

Congress clearly stated that parents shall be informed about the specific criteria listed. A construction that the statute says parents should be informed about program ratings is meritless. The word *which* functions as the subject element of the relative clause;[41] it forms a relative pronoun;[42] and it is relative to the object of the superordinate matrix clause, *informed.*[43] Referential words and phrases, where no contrary inten-

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37. Tabor v. Ulloa, 323 F. 2d 823 (9th Cir. 1963). See, Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381 (1940); Colautti v. Franklin, 439 U.S. 379 (1979); South Carolina v. Catawba Indian Tribe, 476 U.S. 498 (1986).
38. Arcadia v. Ohio Power Co., 498 U.S. 73, 79 (1990).
39. United States v. Menasche, 348 U.S. 528, 538-539 (1955); Nieto v. Ecker, 845 F. 2d 868 (9th Cir. 1988); Quoting, Labor Board v. Jones & Laughlin Steel Corp., 301 U.S. 1, 30 (1937); Montclair v. Ramsdell, 107 U.S. 147, 152 (1883). See, Cromwell v. Benson, 285 U.S. 22 (1932); Platt v. Union P.R. Co., 99 U.S. 48 (1879); Washington Market Co. v. Hoffman, 101 U.S. 112 (1879).
40. Community for Creative Non-Violence v. Reid, 490 U.S. 730 (1989).
41. Quirk, Greenbaum, Leech, Svartvik, A Comprehensive Grammar of the English Language (Longman 1985), §§ 17.14, 17.15.
42. Grammar, supra, §§ 6.32, 6.33.
43. Grammar, supra, § 14.4.

tion appears, refer solely to the last antecedent.[44] The natural and grammatical use of a relative pronoun is to put it in close relation with its antecedent, its purpose being to connect the antecedent with a descriptive phrase.[45]

> which *pron* ... 3 — used as a function word to introduce a restrictive or nonrestrictive relative clause and to serve as a substitute within that clause for the substantive modified by that clause; used in any grammatical relation within the relative clause except that of a possessive; ...[46]

The language of the statute establishes a disjunctive "and/or" relationship between the several listed criteria. The industry proposal establishes an exclusively conjunctive relationship between sexual, violent, and other indecent content.

> Under canons of construction, terms connected by a disjunctive ordinarily should be given separate meanings, unless the context dictates otherwise. [47]

J. CLEAR AND UNAMBIGUOUS MEANING

The provisions set forth in the statute are clear and unambiguous. The provision: "Rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed" is about a clear as the english language gets. The statute does not mean: "Rules for rating video programming that contains mature content about which parents should be informed." Likewise, the provision: "rules...to permit parents to block the display of video programming that they have determined is inappropriate for their children" does not mean "rules to permit parents to block the display of video programming that a third party has determined to be too mature for their children."

A statute, clear and unambiguous on its face, need not and cannot be interpreted by a court and only statutes which are of doubtful meaning are subject to the process of statutory interpretation.[48]

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44. Buscaglia v. Bowie, 139 F. 2d 294 (1st Cir. 1943); Azure v. Morton, 514 F. 2d 897 (9th Cir. 1975); Pacificorp v. Bonneville Power Administration, 856 F. 2d 94 (9th Cir. 1988).
45. Carondelet Canal & Nav. Co. v. Louisiana, 233 U.S. 362 (1914).
46. Webster's Third New International Dictionary, Unabridged (Merriam Webster, 1993).
47. Reiter v Sonotone Corp., 442 US 330, 99 S Ct 2326 (1979).
48. Hamilton v. Rathbone, 175 U.S. 414 (1899); Packard Motor Car Co. v. National Labor Relations Board, 330 U.S. 485 (1947); Ex parte Collett, 337 U.S. 55 (1949).

> Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion. Statutory words are uniformly presumed, unless the contrary appears, to be used in their ordinary and usual sense, and with the meaning commonly attributed to them.[49]

K. AGENCY INTERPRETATION, PRACTICE

As a Federal Agency, the FCC cannot adopt or otherwise deem acceptable, pursuant to P.L. 104-104 § 551(e)(1)(A), rules which nullify the intent, meaning, and stated purpose of the statute. The matter of informing parents about the sexual, violent, or other indecent program content is set forth by statute. The equitable considerations of the television industry are not a factor recognized by the statute. The Ratings Group is grossly mistaken if it believes that their task is to compromise the statutory provisions of a rating system in order to protect the profitability of sexual, violent, or other indecent television programming.

> [W]e must adopt the plain meaning of a statute, however severe the consequences.[50]

Where the language of an act is unambiguous, its construction cannot be changed by the practice of an agency, however long continued.[51] An agency regulation does not control the construction of an act of Congress, when its meaning is plain.[52]

> [N]o deference is due to agency interpretations at odds with the plain language of the statute itself. Even contemporaneous and long-standing agency interpretations must fall to the extent they conflict with statutory language.[53]

If the language is clear and unambiguous, the courts have an overriding obligation to enforce the law as it is written, if the law is constitutional.[54] This principle is a

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49. Caminetti v. United States, 242 U.S. 470, 485-486 (1916). See, United States v. Ron Pair Enters., Inc., 489 U.S. 235, 241 (1989); United States v. Union P. R. Co., 91 U.S. 72 (1875); Yerke v. United States, 173 U.S. 439 (1899); American Exp. Co. v. United States, 212 U.S. 522 (1909); United States v. Lexington Mill & Elevator Co., 232 U.S. 399 (1914).
50. Jay v. Boyd, 351 U.S. 345, 357 (1956); Galvan v. Press, 347 U.S. 522, 528 (1954).
51. United States v. Graham, 110 U.S. 219 (1884).
52. Robertson v. Downing, 127 U.S. 607 (1888).
53. Public Employees Retirement System v. Betts, 492 U.S. 158, 171 (1989). See, ETSI Pipeline Project v. Missouri, 484 U.S. 495 (1988); Escondido Mut. Water Co. v. La Jolla, Rincon, San Pasqual, Pauma, & Bands of Mission Indians, 466 U.S. 765 (1984).

sound one not to be put aside to avoid hardships that may sometimes result from giving effect to the legislative purpose.[55] When statutory terms are unambiguous, judicial inquiry is complete.[56]

> [I]f the statute is clear and unambiguous, that is the end of the matter, for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.[57]

L. EXEMPT VIDEO PROGRAMMING

Congress exempted only political and religious content from the purview of video program ratings. The industry proposal states that "The Guidelines will be applied to all television programming except for news and sports."[58] The industry proposal fails to address the rating of advertisements which contain sexual, violent, or other indecent material. Congress did not exempt advertisements, news, or sports from the scope of "video programming" stated in the statute. "Expressio unius alterius est" is again one of the applicable canons of statutory construction. The television industry seeks to make exemptions where Congress did not.

Many advertisements, including interstitials, contain significantly more sexual, violent, or other indecent material than the programs they sponsor. This has long been a method of circumventing television network "censors." Some examples are: condom ads, diaphragm infomercials, brassiere ads, advertisements showing unborn fetuses, Calvin Klein cologne and underwear ads. The last example is particularly insidious, implying that scantily clothed adolescents are wearing normal everyday public attire.

Many sports programs contain horrendously graphic and gruesome violence that would never be allowed on the air otherwise. Some examples are: roller derby, kick boxing, full contact cage fighting. In the last example of cage fighting, viewers

54. United States v. Standard Brewery, Inc., 251 U.S. 210, 217 (1920); Caminetti v. United States, 242 U.S. 470 (1916).
55. Helvering v. New York Trust Co., 292 U.S. 455 (1934). See, Boudinot v. United States (Cherokee Tobacco) 11 Wall (78 U.S.) 616 (1871).
56. Freytag v. Commisioner, 501 U.S. 868, 873 (1991); Demarest v. Manspeaker, 498 U.S. 184, 190 (1991); Rubin v. United States, 449 U.S. 424, 430 (1981); Burlington N. R.R. v. Oklahoma Tax Comm'n, 481 U.S. 454, 461 (1987).
57. Mobil Oil Exploration & Producing Southeast, Inc. v. United Distribution Cos., 498 U.S. 211, 223 (1991); Sullivan v. Stroop, 496 U.S. 478, 482 (1990).
58. Industry Proposal supra, Appendix p. 5 [¶15].